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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 713

THE UNITED STATES, PETITIONER

v.

THE SUNSWICK CORPORATION, A CORPORATION OF DELAWARE

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CLAIMS

The Solicitor General, on behalf of the United States, prays that a writ of certiorari issue to review the judgment of the Court of Claims, entered in the above-entitled case on January 5, 1948.

OPINION BELOW

The opinion of the Court of Claims (R. 22–36) has not yet been reported.

JURISDICTION

The judgment of the Court of Claims was entered on January 5, 1948 (R. 36). The jurisdiction of this Court is invoked under the provisions of Section 3 (b) of the Act of February 13, 1925, as amended.

QUESTION PRESENTED

Whether a specific directive issued by an agency of the National War Labor Board under Executive Order No. 9250 ("Providing for the Stabilizing of the National Economy"), increasing the wage rates provided in respondent's construction contract with the Government, constituted an interference with respondent's performance for which the United States should be held liable.

EXECUTIVE ORDER AND CONTRACT PROVISIONS INVOLVED

The contract provisions involved are set forth in Appendix A, *infra,* pp. 20–22. Pertinent portions of Executive Order No. 9250 and War Labor Board General Order No. 13 are set forth in Appendix B, *infra,* pp. 23–30.

STATEMENT

On September 21, 1944, respondent entered into a contract with the United States (acting through the Corps of Engineers of the War Department) to perform certain construction work on the South Canal at St. Mary's Falls Canal, Sault Ste. Marie, Michigan. The contract was of the lump-sum type, establishing stated unit prices which totaled, in estimate, $954,452.24 (R. 12–13). Article 17, entitled "Rate of wages," required respondent to "pay all mechanics and laborers employed directly upon the site of the work

* * * the full amounts accrued at time of payment, computed at wage rates not less or more than those stated in the specifications (subject to Executive Order Number 9250 and the General Orders and Regulations issued thereunder) * * *" (R. 4–5, 13–14). The pertinent specification provided that the Secretary of Labor had determined, as of March 11, 1944, that the prevailing rate of wages for "Carpenters, journeymen" was $1.25 per hour,[1] and that these wages "shall be the maximum wages to be paid, subject, however, to Executive Order No. 9250 and the General Orders and Regulations issued thereunder" (R. 5, 14–15). The contract also contained the standard "Changes" (Article 3) and "Disputes" (Article 15) provisions (R. 3–4, 13).

Before bidding, respondent secured a copy of the specifications and relied thereon in the preparation of its bid. Likewise before submission of the bid, respondent's assistant Vice-President

[1] The same section of the specifications (Section 1–21) provided that any other "class of laborers and mechanics * * * shall be classified or reclassified conformably to the foregoing schedule [*i. e.*, the schedule listing "Carpenters, journeymen"] by mutual agreement between the Contractor and class of labor concerned subject to the prior approval of the Division Engineer, G. L. D. [*i. e.*, Great Lakes Division], Chicago, Illinois. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question, accompanied by the recommendation of the Division Engineer, shall be referred to the Secretary of Labor for final determination" (R. 15).

spent several days at Sault Ste. Marie, investigating the labor situation there, and he found that the prevailing rate for carpenters was $1.25 per hour, as the specifications provided, and that an adequate supply of carpenters could be obtained at that rate. Respondent's representative did not, however, call at the office of the local carpenters' union, nor did he discuss the question of carpenters' wage rates with the union officials. In preparing its bid, respondent relied on the specifications' wage provisions, and made no allowance for an increase in wage rates. (R. 16–17.)

Work under the contract began on the day it was signed, September 21, 1944. During the ensuing two weeks, respondent had no difficulty in obtaining, through the local union, a sufficient number of carpenters at the wage rate of $1.25 per hour (R. 17). On October 6, 1944, however, a local union representative demanded that respondent pay those carpenters who were employed on work, which the union construed as "waterfront work," at the rate of $1.425 per hour. The union based its claim on an agreement it had made, on January 1, 1944, with two local contractors, neither of whom performed any waterfront construction work (R. 17). This agreement, of which respondent had no previous knowledge (R. 17), provided that the minimum wage rate for carpenters doing "waterfront work" (as defined in detail) would be $1.425 per hour (R. 17). Re-

spondent refused to accede to the union's demand because it did not believe that its carpenters were doing "waterfront work," as defined by the local agreement, and also because of the wage rate provisions of Article 17 of its contract with the United States[2] (R. 17). Finding themselves unable to settle the controversy, even with the aid of a Conciliation Commissioner from the Labor Department, respondent and the union agreed in writing, on October 25, 1944, to submit the dispute, "in accordance with E. O. No. 9017, dated January 12, 1942 and the War Labor Disputes Act," to the National War Labor Board, or its agent, which was to "make a final disposition of the issues in the case by directive order" (R. 17–18).

The jurisdiction of the National War Labor Board over this type of controversy (in October 1944) formed part of the wartime system which had developed for the peaceful settlement of wage disputes in accordance with the national anti-inflation program. On May 22, 1942, the Building and Construction Trades Department of the American Federation of Labor entered into an agreement with the agencies of the Federal Gov-

[2] Respondent learned somewhat later that the Great Lakes Dock and Dredge Co., the only other contractor engaged in waterfront construction work in that area, had orally agreed to pay and was paying its carpenters $1.425 per hour for waterfront work, although the work was being performed under a government contract which contained the same wage rate specifications as respondent's contract (R. 17).

ernment in charge of building and construction work essential to the successful prosecution of the war, which provided that in all government-financed war construction work, "the wage rates paid under collective bargaining agreements as of July 1, 1942 shall remain in full force and effect for a period of at least one year after that date and, subject to annual renewal of this agreement for the duration of the war"; the July 1, 1942, wage rates were to be subject to revision where they were inadequate because of certain circumstances, and a Wage Adjustment Board was to be created to determine whether any such wage adjustment should be made and to fix the amount (R. 15). In accordance with this agreement, and pursuant to Presidential direction, the Secretary of Labor, on May 29, 1942, issued Administrative Order No. 101 establishing a Wage Adjustment Board with "power to investigate and to recommend an adjustment of wage rates under the above agreement of the labor organizations in the building construction industry." The same order announced that the Secretary of Labor, in determining the prevailing rates of wages under the Davis-Bacon Act (Act of March 3, 1931, 46 Stat. 1494, as amended by the Act of August 30, 1935, 49 Stat. 1011, 40 U. S. C. 276a), would, "unless compelling evidence to the contrary be presented, accept as prevailing those wage rates which were prevailing on July 1, 1942," unless adjusted by a recommendation of the newly-created Wage Ad-

justment Board. 7 Fed. Reg. 5893, amended November 13, 1942, 7 Fed. Reg. 9441. Meanwhile, on January 12, 1942, the President had issued Executive Order No. 9017 (7 Fed. Reg. 237), establishing, in the Office for Emergency Management, a National War Labor Board for the adjustment and settlement of "labor disputes which might interrupt work which contributes to the effective prosecution of the war" (R. 16).

After the enactment of the Stabilization Act of 1942 (Act of October 2, 1942, 56 Stat. 765, 50 U. S. C. App., Supp. V, 961–971), the President (on October 3, 1942) issued Executive Order No. 9250 "Providing for the Stabilizing of the National Economy," and establishing the Office of Economic Stabilization (7 Fed. Reg. 7871, amended by 8 Fed. Reg. 13083, following 50 U. S. C. App., Supp. V, 901). Title II of the Order establishes the wartime national wage and salary stabilization policy. Title III constituted the National War Labor Board as the agency of the Federal Government authorized to carry out the wage policies stated in the Order and the policy directives to be issued by the Economic Stabilization Director. Section 3 of Title III required the War Labor Board to permit the Wage Adjustment Board for the Building Construction Industry to continue to perform its functions "except insofar as any of them is inconsistent with the terms of this Order." Accordingly, at the

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request of the War Labor Board, the Secretary of Labor amended her Administrative Order No. 101, *supra*, on October 13, 1943, to empower the Wage Adjustment Board to carry out any duties and functions delegated to it by the National War Labor Board. 8 Fed. Reg. 14039. On the same day, the Labor Board issued its General Order No. 13, (a) confirming the functions the Wage Adjustment Board had been performing since its inception, and (b) delegating jurisdiction to the Wage Adjustment Board over all labor disputes, voluntary wage or salary adjustments, and wage revision cases in the building construction industry (both private and public) of which the War Labor Board now had cognizance. Major stabilization principles to be followed by the Wage Adjustment Board were set forth, and with particular regard to revision of wages subject to the Wage Stabilization Agreement of May 22, 1942, it was specifically provided that the "Wage Adjustment Board shall be subject both to the provisions of the Wage Stabilization Agreement of May 22, 1942, and to the requirements of the national wage stabilization program * * *" (cf. R. 16).

Pursuant to the foregoing orders and authority, the instant controversy was referred by the National War Labor Board to the Wage Adjustment Board. A hearing was held on November 28, 1944, before a Hearing Officer, and representatives of respondent and the local union appeared

to urge their opposing views. The Hearing Officer recommended to the Wage Adjustment Board that it direct respondent to pay most of its carpenters a wage rate of $1.425 per hour, retroactive to the beginning of the job (R. 18). Respondent filed with the Board written comments urging that this recommendation be rejected (R. 18–19). However, on January 10, 1945, the Wage Adjustment Board issued a directive order, "pursuant to the Secretary of Labor's Administrative Order No. 101, as amended * * * and in conformity with the National War Labor Board's General Order 13 on wage stabilization in building," (a) defining almost all of the carpenter work on respondent's project as "waterfront work," and (b) directing that all of respondent's carpenters doing "the above defined waterfront work" be paid "at the straight time wage rate of $1.425 per hour retroactive to the beginning of the project" (R. 19–20). This wage increase was at no time ordered by the contracting officer or other War Department representatives, nor did the contracting officer make any recommendations to the Wage Adjustment Board or the Labor Department regarding the claimed increase in wages. The contracting officer's participation was limited to his grant of consent to submission of the dispute to the War Labor Board, and the attendance of the Corps of Engineers' local project manager at the hearing (R. 18, 21).

Shortly after the Wage Adjustment Board's directive order, respondent wrote to the contracting officer advising him of the order's terms, and requesting compensation "for extra payments made by us to such carpenters pursuant to such order" (R. 20). The contracting officer replied that "the action of the Wage Adjustment Board is no basis for an adjustment in the price of subject contract" (R. 20). Respondent appealed this decision to the War Department Board of Contract Appeals, to whom the Secretary of War had delegated his authority under Article 15 of the contract. After a hearing, that Board dismissed the appeal on the ground that it was without jurisdiction, under Article 15, since the Wage Adjustment Board's decision was made by the Government acting in its sovereign capacity rather than its contractual character (R. 6–10, 20–21).

Respondent complied with the terms of the Wage Adjustment Board's directive order without instituting court proceedings. The Court of Claims found that respondent's costs were increased $11,222.91 by fulfilling the order's terms with respect to carpenters to whom the order applied, and that the United States should bear the extra cost (R. 21–22). Judgment was entered in that amount[3] (R. 36).

[3] The Court refused to grant judgment for (a) extra wage payments to carpenters not covered by the Wage Adjustment Board, but to whom respondent granted a like increase in order to keep them on the job (R. 21), and (b) claimed additional supervision and overhead costs (R. 22).

SPECIFICATION OF ERRORS TO BE URGED

The Court of Claims erred:

1. In holding that the United States is liable for increased labor costs resulting from respondent's compliance with the Wage Adjustment Board's directive order raising wages over those stated in the specifications.

2. In holding that the directive order of the Wage Adjustment Board was not a public and general act of the United States as a sovereign, but a contractual act for which the United States is liable to respondent.

3. In holding that by the issuance of the Wage Adjustment Board's directive, without making a corresponding upward revision in the amount due respondent, the United States violated an implied condition of the contract not to increase respondent's cost of performance.

4. In holding that the contract and specifications bound the United States to make compensation to respondent for increased wages paid as a result of compliance with the Wage Adjustment Board's directive.

5. In entering judgment for respondent.

REASONS FOR GRANTING THE WRIT

The Court of Claims has thrust upon the United States the cost of an increase in wages paid under a fixed-price Government construction contract because of a directive order issued by the Wage Adjustment Board (as an agency of

the War Labor Board) establishing a higher wage rate than that anticipated at the execution of the contract. The court reached this result because it viewed the order of the War Labor Board's delegate as a contractual, non-sovereign, interference with the respondent's performance, for which the United States should be held liable. This decision burdens the Government with charges it did not assume, and takes a long step toward abrogation of the settled rule that the United States as contractor cannot be saddled with the results of its action as governing sovereign. *Horowitz* v. *United States,* 267 U. S. 458.

1. a. The War Labor Board system functioned in this case, as in thousands of its other cases, as a wartime arbitral substitute for the normal weapons of industrial strife. The Board was created and endowed with broad jurisdiction over wage and other labor disputes both because "the national interest [in a state of war] demands that there shall be no interruption of any work which contributes to the effective prosecution of the war" (Executive Order No. 9017, "Establishment of the National War Labor Board," 7 Fed. Reg. 237), and also "in order to control so far as possible the inflationary tendencies and the cost dislocation attendant thereon which threatens our military effort and our domestic economic structure" (Executive Order No. 9250, "Providing for the Stabilizing of the National Economy," 7 Fed. Reg. 7871). The important general policies an-

nounced by these two Executive Orders were largely implemented by the decision of individual disputes and the case-by-case adjustment of specific problems. In this case, the policy of Executive Order No. 9017 was fulfilled by the submission of the controversy between respondent and the carpenters' union for arbitration, without any work stoppage, and the Wage Adjustment Board's directive presumably accorded with the detailed stabilization policy established by Executive Order No. 9250 and General Order No. 13, *supra,* pp. 7–8, 9. Certainly the entire process of submission, hearing, and decision—far from being unique to this contract—was governed by the general national program for the peaceful settlement of all labor disputes without inflationary disturbance of the domestic economy. But because the Wage Adjustment Board's adjudication was "a specific order issued on a particular job" (R. 31), the court below refused to recognize it as one of those "public and general acts as a sovereign" for which the United States has long been held immune from liability, even though the cost of performance of a particular government contract has been directly increased. *Horowitz* v. *United States,* 267 U. S. 458, 461; *Deming* v. *United States,* 1 C. Cls. 190, 191; *Jones* v. *United States,* 1 C. Cls. 383, 384; *Wilson* v. *United States,* 11 C. Cls. 513, 520. *Gothwaite* v. *United States,* 102 C. Cls. 400; *Standard Accident Ins. Co.* v. *United States,* 103 C. Cls. 607, 612, certiorari

denied, 326 U. S. 729; *J. F. Barbour & Sons* v. *United States,* 104 C. Cls. 360; *Hallman* v. *United States,* 107 C. Cls. 555; *Clemmer Constr. Co.* v. *United States,* 108 C. Cls. 718, 721–722. This narrowing of the *Horowitz* principle to reach only a "broad policy decision" of general application (R. 32), and to exclude all specific administrative applications of the broad general policy, contravenes both the history and the *rationale* of the principle. The Court of Claims has itself refused to reimburse a contractor for increased expense due to such limited governmental action as the withdrawal of troops from a specified western area (*Jones* v. *United States, supra*), an embargo on the transportation of mules into a disputed military zone (*Wilson* v. *United States, supra*), delays in securing necessary priority orders from the War Production Board (*Gothwaite* v. *United States, supra; J. F. Barbour & Sons* v. *United States, supra*), and the enforcement of a traffic regulation at an army post (*Hallman* v. *United States, supra*). From the founding of the Court of Claims, the test of the Government's immunity has been, not the breadth or sweep of the act complained of, but whether it is a public and general sovereign act which would not subject a private person to suit by his private contractor. Under that test, which follows from the "double character of the Government" (*Wilson* v. *United States, supra,* at 521; cf. *Horowitz* v. *United States, supra,* at 461), decisions of the War Labor

Board, like rulings of the War Production Board and the Office of Price Administration, cannot impose liability on the United States, when sued as a contractor, for impediments or difficulties in the other party's performance. If respondent had been executing a similar private construction contract, a like wage increase directed by the Wage Adjustment Board would not have grounded suit for increased compensation. The United States "can be held to no greater liability than other contractors in other courts." *Deming* v. *United States, supra,* at 191.

b. Respondent's contract does not embody any contractual waiver by the United States of this traditional immunity, nor any agreement to pay the costs of a War Labor Board wage increase. The contract is a fixed-price one; it contains no explicit provision casting the risk of wage changes on the Government; and there is nothing from which to imply such an undertaking. Article 17 provides for payment of "wage rates not less or more than those stated in the specifications (subject to Executive Order Number 9250 and the General Orders and Regulations issued thereunder)" (R. 13–14); and section 1–21 of the specifications sets the carpenters' hourly rate at $1.25 and requires that "the wages specified in the schedule shall be the maximum wages to be paid, subject, however to Executive Order No. 9250 and the General Orders and Regulations issued thereunder" (R. 15). These refer-

ences to the maximum and minimum wages being "subject" to Executive Order No. 9250 were obviously inserted to permit the respondent to pay other wages, should those be ordered or recommended by the War Labor Board, without violating its contractual duty. The United States no more agrees to reimburse respondent for increased costs resulting from a decision under the Executive Order than it reserves the right to demand a refund should the application of the national stabilization policy lead to a wage decrease. That this was also respondent's view, prior to the issuance of the Wage Adjustment Board's directive, plainly appears from its careful investigation of the labor situation before submission of its bid, and its vigorous prosecution of the dispute with its carpenters; if the contract had committed the Government to bearing the increased cost, respondent would have no financial stake in maintaining the $1.25 rate, and the Government, which took only an observer's part in the Board proceedings, would have been the real party in interest.[4] The War Department

[4] That respondent did not then hold the Government liable for the wage increase also appears from its failure, so as the record reveals, to indicate to the Board its intention to apply for extra compensation from the Government. General Order No. 13 (8 Fed. Reg. 14039, 14040, *infra*, pp. 28–30) provided that "any wage or salary adjustment approved or ordered by the Wage Adjustment Board * * * which may increase the costs to the government of a product or service being furnished under a procurement contract, shall become effective only if also approved by the Director of Economic Stabilization." No such approval was sought or secured in this case.

Board of Contract Appeals also held that the contract does not provide for reimbursement of increased labor costs (R. 8–9). However, with the contract's bare reference to Executive Order No. 9250 (*supra*, pp. 2–3, 15), the court below fashions such an implied contractual obligation out of the same basic error which leads it to characterize the Wage Adjustment Board's decision as a purely non-sovereign intervention, *i. e.* recompense is justly due respondent from the Government since it was the Government's action in ordering the raising of the carpenters' wages over those anticipated by respondent which caused the increase in the contract's performance cost. But as we have shown (*supra*, pp. 13–15), it is far too late to hold the United States directly responsible for increases in a contractor's costs resulting from sovereign, non-contractual, governmental action, and it is equally erroneous to imply, without any foundation in the agreement's wording, an actual undertaking by the United States to bear such increased costs.

2. The case is important because the Court of Claims has announced a severe qualification of the settled rule of *Horowitz* v. *United States*, 267 U. S. 458, which will probably subject the United States to substantial added liability, if it continues to be applied in Tucker Act cases. The instant decision is also illustrative of the progressive tendency of the court below to cast upon the United States the risk of wage increases

attributable to the action of governmental boards or departments, unless the contract makes entirely explicit the Government's freedom from liability. See *B–W Construction Co.* v. *United States,* 101 C. Cls. 748, reversed *sub. nom. United States* v. *Beuttas,* 324 U. S. 768; *York Engineering Co.* v. *United States,* 103 C. Cls. 613, certiorari denied, 327 U. S. 784; *Albert & Harrison, Inc.* v. *United States,* 107 C. Cls. 292, certiorari denied, 331 U. S. 810; *Paretta Contr. Co.* v. *United States,* No. 46395, decided October 6, 1947, certiorari denied, February 9, 1948, No. 482, this Term;[6] *C. B. Ross Company, Inc.* v. *United States,* No. 46204, decided December 1, 1947, motion for new trial denied March 1, 1947; cf. *Le Veque* v. *United States,* 96 C. Cls. 250, 253–254; *Clemmer Constr. Co.* v. *United States,* 108 C. Cls. 718. There is need for an authoritative reaffirmation of the substance, as well as the words, of the fundamental principle that in the Court of Claims "the United States appear simply as contractors; and they are to be held liable only within the same limits that any other defendant would be in any other court. Though their sovereign acts performed for the general good may work injury to some private

[6] In the *York Engineering* case, the Government's petition was conditioned upon the granting of the contractor's petition, which was denied; in *Albert & Harrison*, the question pertinent to the instant case was not presented as a ground for certiorari; in *Paretta*, the petition was filed by the contractor.

contractors, such parties gain nothing by having the United States as their defendants." *Jones* v. *United States*, 1 C. Cls. 383, 384–385, approved in *Horowitz* v. *United States*, 267 U. S. 458, 461.

CONCLUSION

For the reasons stated, it is respectfully submitted that this petition should be granted.

PHILIP B. PERLMAN,
Solicitor General.

APRIL, 1948.

APPENDIX A

1. Article 17 of the contract provides as follows:

> *Rate of wages.*—(In accordance with the act of August 30, 1935, 49 Stat. 1011, as amended by the act of June 15, 1940, 54 Stat. 399 (U. S. Code, title 40, secs. 276a and 276a–1), this article shall apply if the contract is in excess of $2,000 in amount and is for the construction, alteration, and/or repair, including painting, and decorating, of a public building or public work within the geographical limits of the States of the Union, the Territory of Alaska, the Territory of Hawaii, or the District of Columbia.)
>
> (a) The contractor or his subcontractor shall pay all mechanics and laborers employed directly upon the site of the work, unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account, the full amounts accrued at time of payment, computed at wage rates not less or more than those stated in the specifications (subject to Executive Order Number 9250 and the General Orders and Regulations issued thereunder) regardless of any contractual relationship which may be alleged to exist between the contractor or subcontractor and such laborers and mechanics; and the scale of wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of the work.

The contracting officer shall have the right to withhold from the contractor so much of accrued payments as may be considered necessary by the contracting officer to pay to laborers and mechanics employed by the contractor or any subcontractor on the work the difference between the rates of wages required by the contract to be paid laborers and mechanics on the work and the rates of wages received by such laborers and mechanics and not refunded to the contractor, subcontractors, or their agents.

(b) In the event it is found by the contracting officer that any laborer or mechanic employed by the contractor or any subcontractor directly on the site of the work covered by the contract has been or is being paid a rate of wages less than the rate of wages required by the contract to be paid as aforesaid, the Government may, by written notice to the contractor, terminate his right to proceed with the work or such part of the work as to which there has been a failure to pay said required wages and prosecute the work to completion by contract or otherwise, and the contractor and his sureties shall be liable to the Government for any excess costs occasioned the Government thereby.

2. Section 1–21 of the specifications provides in pertinent part:

1–21. *Rates of Wages.*—(a) The minimum wages to be paid laborers and mechanics on this project, as determined by the Secretary of Labor to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the pertinent locality, are as follows:

Predetermination of the Secretary of Labor as modified 11 March 1944

Classification of Laborers and Mechanics	Minimum rates of wages per hour
Carpenters, journeymen	$1.25

(b) Any class of laborers and mechanics not listed in the preceding paragraph, which will be employed on this contract, shall be classified or reclassified conformably to the foregoing schedule by mutual agreement between the Contractor and class of labor concerned subject to the prior approval of the Division Engineer, G. L. D., Chicago, Illinois. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics to be used, the question, accompanied by the recommendation of the Division Engineer, shall be referred to the Secretary of Labor for final determination. The wages specified in the schedule shall be the maximum wages to be paid, subject, however, to Executive Order No. 9250 and the General Orders and Regulations issued thereunder. Requests for the establishment of such additional classification shall be submitted through the District Engineer. * * *

APPENDIX B

1. Executive Order No. 9250, October 3, 1942, as amended (7 Fed. Reg. 7871, as amended, 8 Fed. Reg. 13083) provides in part as follows:

Providing for the Stabilizing of the National Economy

By virtue of the authority vested in me by the Constitution and the Statutes, and particularly by the Act of October 2, 1942, entitled "An Act to Amend the Emergency Price Control Act of 1942, to Aid in Preventing Inflation, and for Other Purposes" as amended by the Public Debt Act of 1943 (Public Law 34—78th Congress), as President of the United States and Commander in Chief of the Army and Navy, and in order to control so far as possible the inflationary tendencies and the vast dislocations attendant thereon which threaten our military effort and our domestic economic structure, and for the more effective prosecution of the war, it is hereby ordered as follows:

TITLE I—ESTABLISHMENT OF AN OFFICE OF ECONOMIC STABILIZATION

1. There is established in the Office for Emergency Management of the Executive Office of the President an Office of Economic Stabilization at the head of which shall be an Economic Stabilization Director (hereinafter referred to as the Director).

* * * * *

TITLE II—WAGE AND SALARY STABILIZATION POLICY

1. No increases in wage rates, granted as a result of voluntary agreement, collective bargaining, conciliation, arbitration, or otherwise, and no decreases in wage rates, shall be authorized unless notice of such increases or decreases shall have been filed with the National War Labor Board, and unless the National War Labor Board has approved such increases or decreases.

2. The National War Labor Board shall not approve any increase in the wage rates prevailing on September 15, 1942, unless such increase is necessary to correct maladjustments or inequalities, to eliminate substandards of living, to correct gross inequities, or to aid in the effective prosecution of the war.

Provided, however, that where the National War Labor Board or the Price Administrator shall have reason to believe that a proposed wage increase will require a change in the price ceiling of the commodity or service involved, such proposed increase, if approved by the National War Labor Board, shall become effective only if also approved by the Director.

3. The National War Labor Board shall not approve a decrease in the wages for any particular work below the highest wages paid therefor between January 1, 1942 and September 15, 1942, unless to correct gross inequities and to aid in the effective prosecution of the war.

* * * * *

TITLE III—ADMINISTRATION OF WAGE AND SALARY POLICY

1. Except as modified by this Order, the National War Labor Board shall continue

to perform the powers, functions, and duties conferred upon it by Executive Order No. 9017, and the functions of said Board are hereby extended to cover all industries and all employees. The National War Labor Board shall continue to follow the procedures specified in said Executive Order.

2. The National War Labor Board shall constitute the agency of the Federal Government authorized to carry out the wage policies stated in this Order, or the directives on policy issued by the Director under this Order. The National War Labor Board is further authorized to issue such rules and regulations as may be necessary for the speedy determination of the propriety of any wage increases or decreases in accordance with this Order, and to avail itself of the services and facilities of such State and Federal departments and agencies as, in the discretion of the National War Labor Board, may be of assistance to the Board.

3. No provision with respect to wages contained in any labor agreement between employers and employees (including the Shipbuilding Stabilization Agreements as amended on May 16, 1942, and the Wage Stabilization Agreement of the Building Construction Industry arrived at May 22, 1942) which is inconsistent with the policy herein enunciated or hereafter formulated by the Director shall be enforced except with the approval of the National War Labor Board within the provisions of this Order. The National War Labor Board shall permit the Shipbuilding Stabilization Committee and the Wage Adjustment Board for the Building Construction Industry, both of which are provided for in

the foregoing agreements, to continue to perform their functions therein set forth, except insofar as any of them is inconsistent with the terms of this Order.

4. In order to effectuate the purposes and provisions of this Order and the Act of October 2, 1942, any wage or salary payment made in contravention thereof shall be disregarded by the Executive Departments and other governmental agencies in determining the costs or expenses of any employer for the purpose of any law or regulation, including the Emergency Price Control Act of 1942, or any maximum price regulation thereof, or for the purpose of calculating deductions under the Revenue Laws of the United States or for the purpose of determining costs or expenses under any contract made by or on behalf of the Government of the United States.

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2. General Order No. 13 of the National War Labor Board (8 Fed. Reg. 14039) provides in part:

§ 803.13 *General Order 13.* (a) Title III, Section 3 of Executive Order No. 9250 of October 3, 1942, (8 F. R. 7871) provides: "The National War Labor Board shall permit * * * the Wage Adjustment Board for the Building Construction Industry * * * to continue to perform its functions * * * except insofar as any of them is inconsistent with the terms of this order." Pursuant thereto, the Wage Adjustment Board, constituted as hereinafter described, shall continue to perform the duty ascribed to it by Administrative Order No. 101, as amended, of the Secretary of Labor, and by the Wage Stabilization Agreement of May 22, 1942,

between the Building and Construction Trades Department of the American Federation of Labor and Several Government Agencies, all in accordance with the further provisions of this order.

(b) The Wage Adjustment Board for the Building Construction Industry shall consist of nine members, of whom three shall represent labor, three shall represent industry, and three, including the chairman, shall represent the public.

(c) Applications for approval of revision of rates subject to the Wage Stabilization Agreement of May 22, 1942, which revision would otherwise require the approval of the National War Labor Board, shall be submitted for approval to the Wage Adjustment Board. In acting upon such applications, the Wage Adjustment Board shall be subject both to the provisions of the Wage Stabilization Agreement of May 22, 1942, and to the requirements of the national wage stabilization program, as set forth in paragraph (f) hereof.

(d) The Wage Adjustment Board for the Building Construction Industry shall, in addition to the powers set forth in paragraphs (a) and (c) hereof, have jurisdiction over labor disputes and voluntary wage or salary adjustments involving persons employed in the building construction industry (as hereinafter defined) who are not subject to the Wage Stabilization Agreement of May 22, 1942. The Wage Adjustment Board shall have power, subject to review by the National War Labor Board as provided in paragraph (k) hereof, (1) to hear, and issue directive orders, in labor dispute cases, and (2) to make final rulings on voluntary wage and salary adjustments

requiring the approval of the National War Labor Board.

(e) The jurisdiction of the Wage Adjustment Board hereunder shall, as heretofore, be limited to mechanics and laborers in the building and construction industry employed directly upon the site of the work.

(f) In the performance of its duties hereunder, the Wage Adjustment Board, in addition to all pertinent policies of the National War Labor Board and the Director of Economic Stabilization, heretofore or hereafter announced, shall conform to the following principles and to any modification thereof hereafter promulgated by the National War Labor Board:

* * * * *

(h) In accordance with the requirements of Executive Orders No. 9250 and 9328 and the Supplement thereto of May 12, 1943, issued by the Director of Economic Stabilization, any wage or salary adjustment approved or order by the Wage Adjustment Board "which may furnish the basis either to increase price ceilings or to resist otherwise justifiable reductions in price ceilings," or, if no price ceilings are involved, which may increase the costs to the government of a product or service being furnished under a procurement contract, shall become effective only if also approved by the Director of Economic Stabilization. Notice to this effect shall be contained in all rulings and orders requiring this approval which are issued by the Wage Adjustment Board.

* * * * *

(j) (1) All applications for the voluntary adjustment or revision of wage rates shall contain, or the Wage Adjustment

Board shall, before acting on the application, procure, a statement by the employer as to whether the adjustment or revision if approved (i) may furnish the basis to increase price ceilings or (ii) may furnish the basis for an application by the employer for an increase to the government in the price of any product or service. If the statement is in the affirmative as to (i), the Wage Adjustment Board shall send to the Office of Price Administration a copy of the application and a copy of its ruling at the time of issuance thereof. If the statement is in the affirmative as to (ii) and an adjustment of the type that requires the approval of the Economic Stabilization Director is approved by the Wage Adjustment Board, the Wage Adjustment Board shall send to the appropriate procurement agency of the government a copy of its ruling at the time of issuance thereof.

(2) In any wage dispute case where it appears that the wage adjustment recommended or ordered may furnish the basis to increase price ceilings, the Wage Adjustment Board shall send to the Office of Price Administration a copy of the recommendation of its panel or hearing officer at the time of its transmittal to the parties and of its directive order when issued. In any wage dispute case where it appears that the wage adjustment ordered may furnish the basis for an application by the employer for an increase to the government in the price of any product or service and the adjustment is of the type that requires the approval of the Economic Stabilization Director, the Wage Adjustment Board shall send to the appropriate procurement agency of the government a copy of its directive order when issued.

(3) In all cases where the approval of the Director of Economic Stabilization is required, the Wage Adjustment Board shall, after its ruling or order is issued, send the case to the National War Labor Board for transmittal to the Director of Economic Stabilization. The Wage Adjustment Board shall, upon being notified, advise the parties of the action taken by the Office of Price Administration or by the Director of Economic Stabilization.

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